(A)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR

REVISION UNDER SECTION 19(4)
OF THE FAMILY COURT ACT, 1984

CRIMINAL REVISION No.666 / 2006

PETITIONER/ NON-APPLICANT : MOHD. ASHFAQ HUSAIN, S/O. SHRI ALTAF HUSAIN, AGED ABOUT 31 YEARS, R/O. WARD NO.2 NAWAPARA RAJIM, POLICE STATION. GOBRA NAWAPARA, TAHSIL ABHANPUR, DISTRICT RAIPUR (C.G.)

VERSUS

RESPONDENT/ APPLICANT : SMT. SAVITA SAHU @ SAFIA KHAN W/O. ROHIT KUMAR SAHU, R/O. PT. DIN DAYAL UPADHYAY NAGAR, GOBRA NAWAPARA, RAJIM, P.S. GOBRA NAWAPARA, TAHSIL ABHANPUR, DISTT. RAIPUR (C.G.)

11/30/06

23/9/06

23/9/06

REVISION UNDER SECTION 19(4) OF THE FAMILY COURT ACT FOR QUASHING THE PROCEEDINGS UNDER SECTION 125 OF THE CODE OF CRIMINAL PROCEDURE AND ORDER DATED 11.8.05 PENDING AS MJC No.321/2005 IN THE COURT OF PRINCIPLE JUDGE, FAMILY COURT, RAIPUR (C.G.). 26.9.06

XI-HC-78

(125)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr. Rev. No. 666/2006 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

14.02.2007

Shri K.A. Ansari, Sr. Advocate with Shri Syed Imtiaz Ali, counsel for the applicant.

M.(Cri.)P. No. 2324 of 2006:

Heard.

This is an application for condonation of delay in filing the revision.

The relief column of the revision would show that it is filed for quashment of the entire proceedings, however, it has been mentioned in the cause-title that it is also filed for quashment of order dated 11.8.2005.

Since the prayer with relation to quashment of order dated 11.8.2005 has not been made in the relief column, the revision is being treated for quashment of entire proceedings only and for that purpose, no limitation is prescribed, therefore, in view of the relief column of this petition, the application filed under Section 5 of the Limitation Act is infructuous and the same is dismissed. The revision is well within the limitation.

Heard on admission.

The revision is directed for quashment of the proceedings under Section 125 of the Code of Criminal Procedure pending before the Principal Judge, Family Court, Raipur.

The contention of learned counsel for the applicant is that in a petition filed under Section 125 Cr.P.C., the Family Court passed an interim order dated 11.8.2005 and awarded a sum of Rs.1,200/- as an amount of interim maintenance. He submits that subsequent to the filing of his written statement an amendment was filed in which it was mentioned that the respondent is not validly married wife of the applicant, therefore,

P.T.O.

(126)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr. Rev. No. 666/2006 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश — 2 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

she was not entitled for grant of maintenance. He also submits that the amendment was allowed but even after allowing the amendment, in absence of any rebuttal the petition was not dismissed and the same was allowed to be continued by the Family Court. He further submits that since the grounds about the validity of marriage was raised by the applicant before the Family Court and the same was not rebutted by the respondent by filing a consequential amendment, therefore, the Family Court ought to have dismissed the petition holding that the marriage between the parties was not a legal marriage and the respondent was not entitled to receive the amount of maintenance.

This argument advanced by the learned counsel for the applicant is totally misconceived. It is always within the right of a party to raise the grounds which may go to the route of the matter but it is not at once expected by the Court at the stage of pleading that on the pleadings only the matter shall be disposed of rather the correct course of law is to take those grounds as the fact pleaded by the party and to award opportunity to the parties to substantiate and/or rebut the grounds by way of the evidence. There is no reason for this Court to quash the entire proceedings filed by the respondent on the ground that the applicant herein had raised the pleading that the marriage between the parties was void and the said pleading was not rebutted by the opposite party at once.

I do not find any force in the arguments advanced by the learned counsel for the applicant.

The revision has no merits and the same is dismissed.

Sd/-
Sunil Kumar Sinha
Judge

Vcctn

P.T.O.